

**BEFORE THE NEBRASKA TAX EQUALIZATION
AND REVIEW COMMISSION**

| | | |
|-------------------------|---|--------------------------|
| HARVEY LEE QUIRING, |) | |
| |) | |
| Appellant, |) | CASE NO. 04A-53 |
| |) | |
| vs. |) | |
| |) | FINDINGS AND FINAL ORDER |
| GREELEY COUNTY BOARD OF |) | DISMISSING APPEAL AT THE |
| EQUALIZATION, |) | CLOSE OF THE TAXPAYER'S |
| |) | CASE-IN-CHIEF |
| Appellee. |) | |

SUMMARY OF DECISION

Harvey Lee Quiring appeals the Greeley County Board of Equalization's order granting the Taxpayer's 2004 valuation protest only in part. The Board moved to dismiss the Taxpayer's appeal at the close of his case-in-chief for failure to prove a prima facie case.

**I.
ISSUES**

The issues before the Commission are (1) whether the Board's decision to deny the Taxpayer's valuation protest was incorrect and either unreasonable or arbitrary; and (2) if so, whether the Board's determination of value was unreasonable.

**II.
STATEMENT OF THE CASE**

The Taxpayer owns a 75.47-acre tract of unimproved agricultural land legally described as Part of the S $\frac{1}{2}$ SE $\frac{1}{4}$ of

Section 24, Township 17, Range 10, Greeley County, Nebraska.
(E6:6).

The Greeley County Assessor determined that 80% of the subject property's actual or fair market value was \$24,840 as of the January 1, 2004, assessment date. (E1). The Taxpayer timely protested that determination and alleged that 80% of the subject property's actual or fair market value was \$18,304. (E1). The Board granted the Taxpayer's protest in part and found that 80% of the subject property's actual or fair market value was \$24,830 as of the assessment date. (E1).

The Taxpayer appealed the Board's decision on August 20, 2004. The Commission served a Notice in Lieu of Summons on the Board which the Board answered. The Commission issued an Order for Hearing and Notice of Hearing. A copy of the Order and Notice was served on each of the Parties.

The Commission called the case for a hearing on the merits of the appeal in the City of Kearney, Buffalo County, Nebraska, on July 26th, 2005. The Taxpayer appeared personally at the hearing. The Board appeared through Karin L. Noakes, Esq., the Greeley County Attorney. Commissioners Hans, Lore, Reynolds and Wickersham heard the appeal. Commissioner Reynolds served as the presiding officer.

The Taxpayer testified and called the state assessing official as a witness, then rested. The Board then moved to

dismiss the appeal for the Taxpayer's failure to adduce any evidence that the Board's decision was incorrect or unreasonable or arbitrary.

III. APPLICABLE LAW

The Taxpayer is required to demonstrate by clear and convincing evidence (1) that the Board's decision was incorrect and (2) that the Board's decision was unreasonable or arbitrary. (Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9). The "unreasonable or arbitrary" element requires clear and convincing evidence that the Board either (1) failed to faithfully perform its official duties; or (2) failed to act upon sufficient competent evidence in making its decision. The Taxpayer, once this initial burden has been satisfied, must then demonstrate by clear and convincing evidence that the Board's value was unreasonable. *Garvey Elevators v. Adams County Bd.*, 261 Neb. 130, 136, 621 N.W.2d 518, 523-524 (2001).

IV. FINDINGS OF FACT

The Commission finds and determines that:

1. The Taxpayer's only evidence of value is opinion testimony that the subject property's actual or fair market value was \$26,000 as of the assessment date.

2. The Taxpayer testified that the subject property's actual or fair market value was adversely impacted by the presence of leafy spurge; a road which divides the tract of land; the presence of a mud-bottom creek; a high water table which results in swampy conditions; and the claim that the subject property can't be used productively.

**V.
ANALYSIS**

The Taxpayer testified that the subject property's actual or fair market value was \$500 to \$600 per acre for the pasture land; and \$26,000 for the entire parcel. This opinion attributes no value to the 21.54 acres of the subject property east of the road.

The Taxpayer, a licensed real estate agent, adduced no other evidence of actual or fair market value. The Taxpayer adduced no evidence demonstrating the impact of any the factors he alleged adversely impacted the subject property's value. The Taxpayer also alleged that the 21.54 acres of land east of the road should be reclassified as "wasteland." "Wasteland" includes "those land types that cannot be used economically and are not suitable for recreational or agricultural use or production. Some of those land types would be blowouts, riverwash (recent unstabilized alluvial deposits), marshes, badlands, large deep gullies (including streambeds and banks), bluffs, rockland, gravel areas,

and salt flats. To qualify for wasteland the land must be lying in or adjacent to and in common ownership or management with land used for the production of agricultural products. Some of these areas could be developed or reclaimed for some beneficial use by land shaping, revegetation, drainage, or possibly other special practices. Until they are reclaimed, developed, or restored to agricultural production or recreational use, they should be classified as wasteland. Other land types which may be classified as wasteland. Other land types which may be classified are the permanent easement acres associated with the Bureau of Reclamation or irrigation districts. These areas are defined as open canals or ditches, laterals, drains, and service roads for the canal system. Assessors need to verify or be aware of the type of deed or easement that may be filed for these areas before making any determination of classification." 350 Neb. Admin. Code, ch. 14, §002.55 (3/2004).

The uncontroverted evidence establishes that the subject property is used in conjunction with the adjacent 80-acres owned by the Taxpayer. In addition, comparable property immediately northeast of the subject property is grazed by a neighbor. The Taxpayer has failed to adduce clear and convincing evidence that the acres in dispute are "wasteland."

The Taxpayer has failed to adduce any evidence that the Board's decision was incorrect or unreasonable or arbitrary. The

Board, based upon the applicable law, need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was [incorrect and either] unreasonable or arbitrary. *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 168, 580 N.W.2d 561, 566 (1998); Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004). The Board's Motion to Dismiss must accordingly be granted.

**VI.
CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Parties and over the subject matter of this appeal.
2. The Commission is required to affirm the decision of the Board unless evidence is adduced establishing that the Board's action was incorrect and either unreasonable or arbitrary. Neb. Rev. Stat. §77-5016(7) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
3. The Board is presumed to have faithfully performed its official duties. The Board is also presumed to have acted upon sufficient competent evidence to justify its decisions. These presumptions remain until the Taxpayer presents competent evidence to the contrary. If the presumption is extinguished the reasonableness of the Board's value becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests on

the Taxpayer. *Garvey Elevators, Inc. v. Adams County Board of Equalization*, 261 Neb. 130, 136, 621 N.W.2d 518, 523 (2001).

**VII.
ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The Board of Equalization's Motion to Dismiss is granted.
2. The Taxpayer's real property legally described as Part of the S½SE¼ of Section 24, Township 17, Range 10, Greeley County, Nebraska, shall be valued as follows for tax year 2004 as determined by the Board:

| | |
|--------------|----------|
| Land | \$24,830 |
| Improvements | \$ -0- |
| Total | \$24,830 |

3. Any request for relief by any Party not specifically granted by this Order is denied.
4. This decision, if no appeal is filed, shall be certified to the Greeley County Treasurer, and the Greeley County Assessor, pursuant to Neb. Rev. Stat. §77-5016(9) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §9).
5. This decision shall only be applicable to tax year 2004.

6. Each Party is to bear its own costs in this matter.

IT IS SO ORDERED.

I certify that Commissioner Hans made and entered the above and foregoing Findings and Orders in this appeal on the 26th day of July, 2005. The same were approved and confirmed by Commissioners Lore, Reynolds and Wickersham and are therefore deemed to be the Order of the Commission pursuant to Neb. Rev. Stat. §77-5005(5) (Cum. Supp. 2004, as amended by 2005 Neb. Laws, L.B. 15, §7).

Signed and sealed this 26th day of July, 2005.

SEAL

Wm. R. Wickersham, Chair

ANY PARTY SEEKING REVIEW OF THIS ORDER MAY DO SO BY FILING A PETITION WITH THE APPROPRIATE DOCKET FEES IN THE NEBRASKA COURT OF APPEALS. THE APPEAL MUST BE FILED WITHIN THIRTY DAYS AFTER THE DATE OF THIS ORDER AND MUST SATISFY THE REQUIREMENTS OF STATE LAW IN NEBRASKA REVISED STATUTE §77-5019 (REISSUE 2003, AS AMENDED BY 2005 NEB. LAWS, L.B. 15, §11). IF A PETITION IS NOT TIMELY FILED, THIS ORDER BECOMES FINAL AND CANNOT BE CHANGED.